THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (M/B) No. 1383 of 2001
(Old CMWP No. 45874 of 1999)

1. Arif Anwar Khan,
2. Zahid Khan,
   Both sons of Late Sri Mumtaz Khan, R/O Line No. 14/15, Banbhoolpura, (Azad Nagar), Haldwani, District Nainital.

… **Petitioners.**

Versus

1. State of U.P. through Principal Secretary Home, Lucknow.
2. Senior Superintendent of Police, Nainital.
3. Local Intelligence Unit (L.I.U.) Nainital.
4. District Magistrate, Nainital,
5. Union of India through the Principal Secretary Home, New Delhi.

… **Respondents.**

Sri T.A.Khan, Adv., learned counsel for petitioners.
Sri K.P.Upadhyay, Learned Standing Counsel for the State-respondents.
Ms. Anjali Bhargava, learned Standing Counsel for Govt. of India.

Coram: Hon'ble P.C.Verma, J.
Hon'ble B.S.Verma, J.

Date August 08, 2006.

Heard learned counsel for the rival parties and perused the entire material on record.

By means of this writ petition, the petitioners have sought for quashing the impugned order dated 12-10-1999 passed by the respondent no.2, whereby the petitioner have been required to submit the Pass-port from Pakistan as contained in Annexure No.1 to the writ petition.

The petitioner nos. 1 and 2 were born on 5-12-1965 and 6-8-1961 respectively. The main ground of challenge, i.e. for quashing the order, is that the petitioners are citizens of India by virtue of section 4 of the Citizenship Act, 1955, as amended in the year 1992. Relevant extract of Section 4 of the Citizenship Act reads as under:-

“4. Citizenship by descent- (1) A person born outside India,-

(a) on or after the 26th January, 1950, but before the commencement of the Citizenship (Amendment) Act, 1972, shall be a citizen of India by descent if his father is a citizen of India at the time of his birth; or

(b) on or after such commencement, shall be a citizen of India by descent if either of his parents is a citizen of India at the time of his birth:

Provided that if the father of such a person referred to in clause (a) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless-

(a) ***his birth is registered*** at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) his father is, at the time of his birth, in service under a Government in India.

XXX XXX XXX XXX XXX”

The petitioners are entitled to become citizens of India under the provisions of sub-section (1) of Section 4 of the aforesaid Act.

On the other hand, Counter Affidavit has been filed by the State of Uttaranchal annexing therewith letter of the Government of India, whereby the petitioners have been informed to apply for registration of citizenship under Section 5 of the said Act. In this view of the matter, it is open for the petitioners to apply for registration of their birth in India under section 5 of the Act for taking benefit of sub-section (1) of Section 4 of the Citizenship Act.

If such application is made within a period of fifteen day from today, the same shall be disposed of by the Home Ministry of the Government of India within a period of one month thereafter. Till the registration of birth either done or refused, the stay order granted by this Court on 26.05.2005 in the Writ Petition shall be operative.

The writ petition is disposed of accordingly.

(B.S.Verma, J.) **(P.C.Verma, J.)**

RCP